

Notice of Allowability

Application No.

10/601,599

Applicant(s)

LAI ET AL.

Examiner

Margaret Einsmann

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to amendment of 3/8/05.
2. ☐ The allowed claim(s) is/are 1,2 and 12-17.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Applicant's remarks and amendment has overcome the rejections of record. Specifically, the 102(b) rejection of claims 1,2,4-11 over Russ et al. has been overcome by the addition of proportions to claim 1. As applicant has pointed out, the composition of example 72 contains 2.18% of Dye B26 and 97.82 % of dye B34 which is applicant's dye of formula I. Applicant's claim 1 now require 15-85% by weight of each of the two dyes, and claim 2 requires 30-70% of each dye. Regarding the 103 rejection over Russ, the claimed percentages are not obvious over Russ et al. who requires at least 90% of the primary dye in the compositions and no more than 10% of the secondary dye.

Regarding the rejection over Corso: Applicant has disclosed superior lightfastness, high degree of dyeing, and high fastness to perspiration of the inventive dyestuff mixtures. Mixtures of the specifically claimed dyes are not clearly disclosed in Corso, although they are suggested. The tables in applicant's specification show that the inventive mixture has superior fastness to acid perspiration light and alkali perspiration light over dyestuff II when used alone and over other prior art

dyes. Examples 2 and 3 of the inventive mixtures as shown in the specification show the proportions of dyestuff I and II as claimed in claim 2 but not of the mixture as claimed in claim 1.

Applicant has provided test data which is not in the form of a 1.132 declaration. The examiner is considering this data because it is clear that this data has been submitted as a result of comparing the composition of Russ et al. to the claimed compositions and supplements the data in the specification. The test data includes inventive compositions containing percentages of dye I and II as claimed in both claims 1 and 2. Although the newly submitted technical data is not dated, it is signed by an inventor, and was clearly done as a response to the rejection over Russ. et al. as evidenced by the last composition on page 2 of the technical data and in the two color charts. Accordingly, the technical data was obtained between 11/8/04 and 3/8/05. The technical tests are merely an extrapolation of the data in the specification, which did not compare compositions having 15%-85% of each dye. The newly submitted data shows superior colorfastness and acid and alkali perspiration light fastness in the compositions covered by the instant claims. These properties are not suggested by the prior art.

Since applicant has shown superior properties of the dye mixture in the proportions as claimed, the obviousness rejections over Russ et al and Corso et al. have been mooted.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-W and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5/25/05


Margaret Einsmann
Primary Examiner
Art Unit 1751